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10/723,481	11/26/2003	William Devere Jones	P4480-PAT	9551

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EXAMINER

DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/723,481

Applicant(s)

JONES, WILLIAM DEVERE

Examiner

Mark A. Deuble

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☒ Claim(s) 8,9 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of claims 1-22 in the telephonic interview February 3, 2005 with Christopher Ellis is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 23-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply of February 3, 2005.

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the system having substantially no support rollers carried between the parallel side walls of the frame must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 7, 12, 14, 19, and 20 all include the phrase "designed to be" which renders the scope of the claims impossible to ascertain because it is unclear how this phrase limits the structure of the claimed invention. For example, with reference to claims 1 and 14, it is unclear if a conveyor system that has belt support and guide mounts that were not designed specifically to be supported in spaced apart relation by a pair of generally parallel side walls of a conveyor frame but were none the less capable of being supported in that fashion would meet that limitation of the claims.

Claim 19 include the phrase "intended to be" which renders the scope of the claims impossible to ascertain because it is unclear how this phrase limits the structure of the claimed invention. For example, it is unclear if a conveyor system that has belt support and guide that were not intended by a manufacturer specifically to be supported in spaced apart relation by a

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pair of generally parallel side walls of a conveyor frame but were none the less capable of being supported in that fashion would meet that limitation of the claim.

Claims 1 and 14 recite an endless loop belt conveyor system “having substantially no support rollers carried between the parallel side walls of the frame” and “the conveyor system substantially without support rollers.” This language renders the scope of the claims indefinite because it appears from the Figures and the Specification of the present application that the system of the present invention includes support rollers 66 and 44 that are located between the side walls of the frame. This conflict renders the scope of the claim impossible to ascertain.

Claims 11 and 22 recite an endless loop belt conveyor “wherein when after substantially all the support rollers are removed from the rigid frame.” It is unclear if this language is intended to be a method step in a hybrid apparatus and process of making the apparatus claim or a mere recitation of intended use because the preamble of the claims appear to be directed to the conveyor or conversion kit per se and not to a method of making the conveyor or of using the conversion kit.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 5-7, 10, 12-15, 17, 19-20 and 22 rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson (U.S. Patent No. 5,692,597).

Ferguson shows, in Figs. 2 and 6, an endless loop belt conveyor system having a pair of generally parallel side walls 34, 35 joined by a series of spaced apart connector bars 30 to form a rigid frame with a head and a tail portion. The assembly includes an endless loop belt conveyor belt support and guide 14 (hereinafter the guide) that has a substantially linear, flat and smooth, non-moving upper surface that supports and guides an endless loop belt for movement around a conveyor system substantially without support rollers. Two conveyor belt support and guide mounts 26 (hereinafter the mounts) are supported in spaced apart relation by the frame so that they extend from one sidewall to the other to support the guide therebetween. As can be seen in Fig. 6, the guide has a width dimension that is less than the distance between the sidewalls of the frame so that it is not connected directly to the sidewalls while the mounts and the upper yolk portion 28 thereof have a width dimension substantially the same as the distance between the sidewalls so that they may be connected thereto when the belt is threaded on the connector bar. The system also includes motor driven sprocket means 25 that is dropped in and attached to the frame at the head or tail portion thereof. Thus Ferguson shows all the structure required by claims 1-3, 5-7, 10, 12-15, 17, 19-20 and 22.

In regard to the preamble of claims 12 and 14 reciting a conversion kit for converting a roller conveyor that includes a frame having head and tail portions with two generally parallel side walls therebetween that had originally carried a plurality of support rollers at spaced apart locations between the parallel sidewalls into an endless belt loop conveyor, it should be noted that the assembly illustrated in Figs. 3 and 4 would be capable of being used as such a kit.

8. Claims 1-2, 4-7, 10, 12-14, 16, and 19-20 rejected under 35 U.S.C. 102(b) as being anticipated by Esler (U.S. Patent No. 5,692,597).

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Esler shows, in Figs. 1 and 2, an endless loop belt conveyor system having a pair of generally parallel side walls 3 joined by a series of spaced apart connector bars 7 to form a rigid frame with a head and a tail portion. The assembly includes an endless loop belt conveyor belt support and guide 50 (hereinafter the guide) that has a substantially linear and smooth, non-moving upper surface that supports and guides an endless loop belt for movement around a conveyor system substantially without support rollers. A plurality of conveyor belt support and guide mounts 33 (hereinafter the mounts) are supported in spaced apart relation by the frame so that they extend from one sidewall to the other to support the guide therebetween. As can be seen in Fig. 7, the guide has a width dimension that is less than the distance between the sidewalls of the frame so that it is not connected directly to the sidewalls while the mounts and the upper yolk portion 41 thereof have a width dimension substantially the same as the distance between the sidewalls so that they may be connected thereto when the bolt is threaded on the connector bar. Thus Esler shows all the structure required by claims 1-2, 4-7, 10, 12-14, 16, and 19-20.

In regard to the preamble of claims 12 and 14 reciting a conversion kit for converting a roller conveyor that includes a frame having head and tail portions with two generally parallel side walls therebetween that had originally carried a plurality of support rollers at spaced apart locations between the parallel sidewalls into an endless belt loop conveyor, it should be noted that the assembly illustrated in Fig. 7 would be capable of being used as such a kit.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson in view of Moser (U.S. Patent No. 4,518,303).

Ferguson shows all that is required by the claims except for the idler sprocket roller means required by claims 11 and 18. However, Moser teaches that an idler roller may be placed at the opposite end from a motorized driven sprocket to smoothly support an endless loop belt of the type shown in Ferguson with minimal friction. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Ferguson with an idler sprocket roller means at the end opposite the driven sprocket 25. When this is done, the resulting assembly would have all the structure required by claims 11 and 18.

#### ***Allowable Subject Matter***

11. Claims 8-9 and 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The art cited by the examiner that is not discussed above shows various support arrangements for endless loop belt conveyor systems that are similar to that of the present invention.



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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D Lillis can be reached on (703)308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md



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